

### Remarks

Claims 1-23 are currently pending. Claims 1, 14, and 21 are currently amended to correct a minor informality.

The following remarks are in response to the Final Office Action mailed December 23, 2009.

#### **Claim Rejections – 35 U.S.C. § 103**

Claims 1-23 stand rejected under 35 U.S.C. § 103 as unpatentable over Cushing (U.S. Pat. No. 7,162,447) in view of Huttenlocher (U.S. Pat. App. Pub. No. 2003/0093343) and in further view of Madden (“Structural Changes in Trading Stocks,” J. Portfolio Management, Fall 1993) and Gianakouros (U.S. Pat. No. 7,035,819). These rejections are respectfully traversed.

First, Applicant appreciates the fact that the Patent Office has conceded that neither Cushing, Huttenlocher, nor Madden teaches or suggests the claim 1 limitations of:

executing with a second processor a trade comprising said first order and said second order at a trade execution price, wherein said trade execution price complies with said first price limit and said second price limit, and wherein *said trade execution price is calculated to minimize a difference between said reference price and said trade execution price,* wherein said first and second processors may be the same processor, and wherein *said execution price is different from said reference price.*

The Patent Office now asserts that Gianakouros teaches these limitations. Applicant respectfully disagrees, for the following reasons.

First, in the system of Gianakouros, a buy order and a corresponding sell order are executed at different prices: “retail investors whose orders are executed on the System would always buy at a price  $\frac{1}{4}$  spread lower than the national best offer and sell at a price  $\frac{1}{4}$  spread higher than the national best bid” (see col. 13, line 66 to col. 14, line 2), while the institutional client counterparties always receive NBBO midpoint execution (see col. 14, lines 5-8). This means that a retail investor’s sell order is always executed at a price  $\frac{1}{4}$  spread less than the price at which a matching buy order from an institutional client is executed.

In contrast, crossing buy and sell orders executed according to the method of claim 1 are executed at the same price – the “execution price.”<sup>1</sup>

Second, Gianakouros does not teach executing orders at an execution price that minimizes the non-zero difference<sup>2</sup> between the execution price and a reference price, as required by claim 1. This is partly because, as explained above, Gianakouros fails to teach a *single* execution price for crossing orders.

Moreover, if the NBBO midpoint as used by Gianakouros corresponds to the “reference price” of claim 1 (as asserted in the Office Action), then for institutional orders, the execution price is the same as the reference price – a situation explicitly excluded by claim 1. On the other hand, for retail orders in Gianakouros the execution price is *always* ¼ spread away from the NBBO – there is no attempt to minimize this ¼ spread difference. Indeed, the system of Gianakouros relies heavily on the “price improvement” provided by this difference, and there is no indication that the system of Gianakouros would be practical without that difference – i.e., Gianakouros arguably *teaches away* from minimizing or reducing that difference.

In summary, Gianakouros fails to teach the claim 1 requirements of: (a) executing a *trade* comprising a first (limit) order and a second (limit) order at a trade execution *price* (i.e., a single price for both orders in the trade); (b) wherein said trade execution price is *calculated to minimize a difference between said reference price and said trade execution price*, and (c) wherein said *execution price* (for both orders in the trade) *is different from said reference price*. And as the Office Action admits, none of the other three cited references teaches these limitations.

In light of the above, Applicant respectfully submits that independent claim 1 is patentable over Cushing, Huttenlocher, Madden, and Gianakouros, both individually and in combination. For the same reasons provided above, independent claims 14 and 20 also are patentable over the cited references. And since the remaining claims depend from either claim 1, 14, or 20, all of those claims are likewise patentable.

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<sup>1</sup> Nothing said in this or previous responses is intended to limit the scope of the described invention beyond the plain wording of the claims being discussed, and Applicant reserves the right to pursue other, potentially broader claims, in related patent applications.


<sup>2</sup> The difference is non-zero because of the “execution price is different from said reference price” requirement of claim 1.

In view of the foregoing, Applicant respectfully submits that all pending claims are allowable. Accordingly, reconsideration and allowance of these claims are respectfully requested.

No fee is believed due in connection with this Reply. If any fee is due, please charge that fee to Cowan, Liebowitz & Latman's Deposit Account No. 03-3415.

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